Supreme Court, U. S.
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In The

Supreme Court of the United States

October Term, 1974

No. 74-1613

RAYMOND C. PACE, City Sheriff,
Petitioner,

v.

STEPHEN EARL SQUIRE,
Respondent.

PETITION FOR A WRIT OF CERTIORARI TO THE JUDGMENT OF THE UNITED STATES COURT OF APPEALS FOR THE FOURTH CIRCUIT

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RAYMOND C. PACE, CITY SHERIFF,
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v.

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Respondent,

PETITION FOR A WRIT OF CERTIORARI TO THE JUDGMENT OF THE UNITED STATES COURT OF APPEALS FOR THE FOURTH CIRCUIT

PRELIMINARY STATEMENT

Raymond C. Pace, City Sheriff, Petitioner, prays that a Writ of Certiorari be issued to review a judgment of the United States Court of Appeals for the Fourth Circuit, decided May 20, 1975, in which it was held that § 18.1-253.2, Code of Virginia (1950), as amended, was unconstitutionally vague and overbroad in violation of the First and Fourteenth Amendments of the Constitution of the United States. Petitioner believes said decision is not in accord with applicable decisions of this Court.

OPINIONS BELOW

The Memorandum Opinion and Order of the United States District Court for the Western District of Virginia,

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Charlottesville Division, filed August 9, 1974, is reported as *Squire* v. *Pace*, 380 F. Supp. 269 (W.D. Va. 1974), and is included herein as Appendix A. (App. 1-). The Opinion of the United States Court of Appeals for the Fourth Circuit entered May 20, 1975, is not reported and is included herein as Appendix B. (App. ....).

JURISDICTION

The jurisdiction of this Honorble Court to issue a Writ of Certiorari in this case is grounded upon 28 U.S.C. § 1254(1).

QUESTION PRESENTED

I.

Is The Virginia Disorderly Conduct Statute Unconstitutionally Vague Or Overbroad?

STATUTES INVOLVED

§ 18.1-253.2, Code Of Virginia (1950), As Amended

Disorderly conduct in other public places; power of counties, cities and towns to adopt ordinances and resolutions.—If any person behaves in a riotous or disorderly manner in any street, highway, public building, or any other public place, other than those mentioned in the preceding section (§ 18.1-253.1), or causes any unnecessary disturbance in or on any public conveyance, by running through it, climbing through windows or upon the seats, failing to move to another seat when lawfully requested to so move by the operator, or otherwise annoying passengers or employees therein, he shall be guilty of a misdemeanor.

Cities, towns and counties are hereby authorized and empowered to adopt ordinances or resolutions prohibiting and

punishing the above acts, or any of them, when committed in such cities, towns, or counties and such ordinances or resolutions shall provide the same punishment for a violation thereof as is provided by this section anything in the charters of such cities or towns to the contrary notwithstanding. All fines imposed for the violation of such ordinances or resolutions shall be paid to and retained by such cities, towns and counties, and the Commonwealth shall not be chargeable with any costs in connection with any prosecution for the violation of any such ordinances or resolutions.

§ 18.1-255, Code Of Virginia (1950), As Amended

Punishment for using abusive language to another.—If any person shall, in the presence or hearing of another, curse or abuse such other person, or use any violent abusive language to such person concerning himself or any of his relations, or otherwise use such language, under circumstances reasonably calculated to provoke a breach of the peace, he shall be guilty of a misdemeanor, and on conviction fined in any sum not less than two dollars and fifty cents nor more than five hundred dollars, in the discretion of the jury or the judge trying the case without a jury.

§ 4533, Code Of Virginia (1946)

Riotous or disorderly conduct in certain public places.—If any person behaves in a riotous or disorderly manner in any street, highway, public building, or any other public place, other than those mentioned in the preceding section, or causes any unnecessary disturbance in any street car, railroad car, omnibus or other public conveyance, by running through it, climbing through windows or upon the seats, failing to move to another seat when lawfully requested to so move by the operator, or otherwise annoying

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passengers or employees therein, he shall be guilty of a misdemeanor.

CONSTITUTION

First Amendment To The Constitution Of The United States

Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof; or abridging the freedom of speech, or of the press; or the right of the people peaceably to assemble, and to petition the government for a redress of grievances.

Fourteenth Amendment To The Constitution Of The United States

All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the state wherein they reside. No state shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.

STATEMENT OF THE CASE

A Reserve Officer's Training Corps review was scheduled on April 29, 1972, at Scott Stadium at the University of Virginia. A normal review would consist of a band passing in review, followed by a reviewing party. After the reviewing party would station itself, a general review would take place, followed by the awarding of various certificates and medals.

Prior to the review, there had been demonstrations against the war in Vietnam at the University. A group of demonstrators, referred to as the Guerilla Theater, appeared

at the stadium. There were approximately a dozen individuals in the group. The group attempted to enter at the open end of the stadium, which has a design similar to that of a horseshoe. After being told that they might not enter there, the group then entered the stadium on the west side. The group was told that a certain area of the stadium was reserved. The reserved section was marked by means of tapes and signs. It was indicated by the group that they wished to place someone on the wall of the stadium in front of the seats. The group was told that this would block the view of the audience.

The Respondent, Stephen Earl Squire, who apparently was not in the group and who was not a student at the University, and two others proceeded to climb up on the wall. Each was holding a sign, which was approximately 24 inches by 32 to 36 inches. Their position was such as to block the view of the lower rows from the activities on the field.

The Respondent was told by Dean Williams that he was in a reserved area and that he was blocking the view of the audience and was asked to leave that area. The three individuals continued to sit on the wall. The sign held by the Respondent was taken from him with the intent that this would move the three individuals from the area. The Respondent removed himself from the wall in order to get his sign. The Respondent then sat down. Some loud argument ensued, and a part of the crowd moved into the area.

Dean Canevari of the University came upon the scene and called for an officer to move the Respondent from the area. The Respondent did not do so. An officer then having arrived, the Respondent was arrested.

At the time of the incident, the band was in position but had not yet moved on the field.

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The arrest was made because the Respondent refused to move from the area. The Respondent testified that he did not know the section was reserved until just before the police officers arrived, and denied that he was told that it was a reserved section. The Respondent further testified that it was his position that he had a right to stand and hold the sign in front of people even if their view was blocked. The Respondent further testified that when Dean Williams approached him, the Dean told him that he was blocking the audience's view and that he must move to another section or lower the sign. The Respondent then testified that he raised the sign.

The Respondent was charged with disorderly conduct pursuant to § 18.1-253.2, Code of Virginia (1950), as amended, and on May 11, 1972 was convicted and sentenced to six months in jail suspended, and to a fine of $25 by the Municipal Court of the City of Charlottesville. Respondent appealed his conviction to the Corporation Court of the City of Charlottesville and on October 13, 1972, was again found guilty and sentenced to serve four months in jail and to pay a fine of $600.

Respondent then appealed his conviction to the Supreme Court of Virginia on several grounds, one of which was that § 18.1-253.2 was vague and overbroad and in violation of the Due Process and Equal Protection clauses of the Fourteenth Amendment to the United States Constitution. On April 27, 1973, the Supreme Court of Virginia granted a writ of error and supersedeas. The Court, however, granted the writ only as to an assignment of error relating to proper venue of the trial. The case was decided by the Supreme Court of Virginia in an Opinion of October 8, 1973, found in 214 Va. 260, wherein Respondent's conviction was affirmed.

The Respondent thereafter filed a petition for a writ of certiorari with the Supreme Court of the United States. On May 28, 1974, the Supreme Court of the United States denied the petition.

Respondent filed on June 11, 1974, a petition for writ of habeas corpus with the United States District Court for the Western District of Virginia, Charlottesville, Virginia, pursuant to 28 U.S.C. § 2241 naming as respondent therein Raymond C. Pace, City Sheriff of the City of Charlottesville. Thereafter, after argument of counsel, by order entered August 8, 1974, the Court held § 18.1-253.2 to be unconstitutionally vague and overbroad in violation of the First and Fourteenth Amendments of the Constitution of the United States and granted Respondents petition for a writ of habeas corpus. The United States Court of Appeals for the Fourth Circuit affirmed the District Court in its Opinion of May 20, 1975.

ARGUMENT

I.

The Virginia Disorderly Conduct Statute Is Not Unconstitutionally Vague Or Overbroad

Section 18.1-253.2, Code of Virginia (1950), as amended, provides, in pertinent part, as follows:

> "If any person behaves in a riotous or disorderly manner in any street, highway, public building, or any other public place, other than those mentioned in the preceding section (§ 18.1-253.1), or causes any unnecessary disturbances in or on any public conveyance, by running through it, climbing through windows or upon the seats, failing to move to another seat when lawfully requested to so move by the operator, or otherwise annoying passengers or empolyees therein, he shall be guilty of a misdemeanor."

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When a State court has provided a construction of a State statute, that construction is binding upon the United States Supreme Court. *Gooding* v. *Wilson,* 405 U.S. 518, 92 S.Ct. 1103 (1972); *Chaplinsky* v. *New Hampshire,* 315 U.S. 568, 62 S.Ct. 766 (1942).

In *Hackney* v. *Commonwealth,* 186 Va. 888, 45 S.E.2d 241 (1947), the Supreme Court of Virginia, in interpreting § 4533-a, Code (1946), the present section's predecessor, stated in 186 Va. at p. 892, 45 S.E.2d at 243, as follows:

> "While the statute is penal and must be construed strictly against the Commonwealth, the dominant purpose of its enactment was to preserve peace and good order. . . . A person violates the statute if . . . his conduct is such as tends to corrupt public morals or to outrage the sense of decency of others. . . ."

The Court in *Taylor* v. *Commonwealth,* 187 Va. 214, 46 S.E.2d 384 (1948), reversed a conviction under § 4533-a. The defendant, a Black, had been ordered to take a seat in the rear of a bus in accordance with rules and regultions of the carrier. The defendant refused to move. The Court stated at 187 Va. at pp. 220-221, 46 S.E.2d at p. 387, that the defendant "had not disturbed any person or persons, or caused any commotion affecting in any degree the peace and good order. . . . Neither her words nor her acts had a *vicious or injurious* tendency, offensive to good morals or public decency. She was guilty of no definite misbehavior or misconduct in the sense that she was disorderly of turbulent." (Emphasis supplied.)

In *Mercer* v. *Winston,* 214 Va. 281, 199 S.E.2d 724 (1973), the Supreme Court of Virginia interpreted § 18.1-255, which provides as follows:

> "If any person shall, in the presence or hearing of another, curse or abuse such other person, or use any

> violent abusive language to such person concerning himself or any of his relations, or otherwise use such language, under circumstances reasonably calculated to provoke a breach of the peace, he shall be guilty of a misdemeanor, and on conviction fined in any sum not less than two dollars and fifty cents nor more than five hundred dollars, in the discretion of the jury or the judge trying the case without a jury."

The Court stated at 214 Va. at p. 284, 199 S.E.2d at p. 726, as follows:

> "The Virginia statute, Code § 18.1-255, addresses itself to a direct confrontation of individuals in which one curses or abuses the other or uses violent abusive language concerning the other or his or her relations under circumstances which would precipitate an immediate, forceful and violent reaction by a reasonable person. It envisions words of a kind and nature spoken under such circumstances as by their utterance reasonably tend to provoke a breach of the peace.
>
> Code § 18.1-255 serves a valid and proper purpose for it is aimed at preventing personal, face-to-face, abusive and insulting language likely to provoke a violent reaction and retaliation, and we so construe the statute. We limit its application to words that have a direct tendency to cause acts of violence by the person to whom, individually, the remark is addressed. In light of such construction the statute is not constitutionally vague and overbroad under the First and Fourteenth Amendments to the United States Constitution."

It is submitted that the interpretation of § 18.1-255 by the Supreme Court of Virginia serves as an interpretation as to what conduct or words are proscribed by § 18.1-253.2.

Although § 18.1-253.2 is clearly more particularly aimed at conduct than at speech, and although the statute is deemed to include speech, *Hackney, supra,* and *Taylor, supra,* the

speech proscribed by the section can only be deemed to be that which is "riotous or disorderly."

Interpretation by the Supreme Court of Virginia in *Taylor, supra,* decided after *Hackney, supra,* of § 18-253.2 clearly indicates that words used further must be vicious or injurious. Those words can only refer to what is otherwise termed "fighting words." That is made more clear by the Court's interpretation of § 18.1-255 in *Mercer, supra,* which, it is submitted, further defines and limits § 18.1-253.2. A statute punishing the utterance of "fighting words" does not violate the Fourteenth Amendment. *Chaplinsky, supra,* and *Gooding, supra.*

The statute is not so overbroad, as interpreted by the Supreme Court of Virginia, to encompass speech protected by the First Amendment. The statute does not contain such words as "opprobrious," "annoying," or "abusive," words which have been held to be broad enough to include speech which may not be proscribed. *Gooding, supra; Coates* v. *City of Cincinnati,* 402 U.S. 611, 91 S.Ct. 1686 (1971).

The statute, as interpreted by the Supreme Court of Virginia, is not vague. A statute violates due process of law if it does not give a person of ordinary intelligence fair notice that his conduct is forbidden or if it encourages or permits arbitrary and erratic arrests and convictions. *United States* v. *Harriss,* 347 U.S. 612, 74 S.Ct. 808 (1954); *Thornhill* v. *Alabama,* 310 U.S. 88, 60 S.Ct. 636 (1940); *Papachristou* v. *City of Jacksonville,* 405 U.S. 156, 92 S.Ct. 839 (1972). Section 18.1-253.2, as interpreted by the Supreme Court of Virginia, gives adequate notice to an individual as to what constitutes a violation thereof and cannot by its language serve to encourage or permit arbitrary arrests or convictions. Speech to be in violation of the statute must have a vicious or injurious tendency or, in other words, must

constitute "fighting words." Those fighting words must be words which have a direct tendency to cause acts of violence by the person to whom individually the remark is addressed. *Mercer, supra.*

CONCLUSION

For the foregoing reasons, it is respectfully submitted that the Writ of Certiorari should be granted and the judgment in this case reversed.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I, Linwood T. Wells, Jr., Assistant Attorney General of Virginia, counsel for Raymond C. Pace, City Sheriff, in the captioned matter and a member of the Bar of the Supreme Court of the United States, do hereby certify that on the 19th day of June, 1975, I mailed ~~a copy~~ 3 copies of the foregoing Petition for a Writ of Certiorari to the judgment of the United States Court of Appeals for the Fourth Circuit by first class mail to John C. Lowe, Lowe and Gordon, 1111 West Main Street, Charlottesville, Virginia 22903, counsel for Stephen Earl Squire.

LINWOOD T. WELLS, JR.
Assistant Attorney General